

CHAPTER 114

NONCONFORMING BUILDINGS AND USES

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114.010. NONCONFORMING USE OF LAND. The lawful use of land existing on the effective date of this ordinance (November 13, 1970), although such use does not conform to the regulations specified for the zone in which such land is situated, may be continued, provided that no such use shall be enlarged or increased, or be extended to occupy a greater area than that occupied by such use at the time of the passage of this ordinance, and if any such use ceases, as hereinafter provided, subsequent use of such land shall be in conformity with the regulations specified in this ordinance for the zone in which such land is situated.

114.020. NONCONFORMING USE OF A BUILDING. The lawful use of a building existing on the effective date of this ordinance (November 13, 1970), may be continued although such building or the use made thereof does not conform to the regulations specified for the zone in which such building is located.

114.040. NONCONFORMING LOTS OF RECORD. Those lots which:

- (A) are of record.
- (B) were created prior to the adoption of the Polk County Subdivision and Partition Ordinance (May 15, 1974) by deed or sales contract or platted subdivision as provided by law; or,
- (C) were created after May 15, 1974 in conformance with all laws and regulations pertaining to such division of land.

Such lots may be used for a single-family dwelling in those zones in which the use is permitted, provided that yard dimensions and all other requirements not involving lot area or width shall conform to zone regulations.

114.050. CESSATION OF NONCONFORMING USE OF BUILDING AND LAND. When the actual operation of a nonconforming use of a building ceases for a continuous period of one (1) year, such building and the land on which it is located shall then be subject to all the regulations, except required set backs and off-street parking specified by this ordinance for the zone in which such land and building is situated. In case the nonconforming use of land where no building is involved ceases for a period of 30 days, then such land shall be subject to all the regulations specified for the zone in which the land was located. Nonconforming land includes land used for the grazing or keeping of livestock in zones where such use is not permitted.

114.060. REPAIR TO NONCONFORMING STRUCTURES. A nonconforming structure may be repaired and maintained, so long as any such repair or maintenance does not in any way increase its nonconformity and it remains otherwise lawful. [114.070 Repealed by Ordinance No. 91-36, dated October 30, 1991.]

114.071. DESTRUCTION OF NONCONFORMING STRUCTURES.

- (A) In case any lawful nonconforming building is damaged or destroyed by fire, other casualty or by any natural disaster, the building may be repaired or rebuilt if such repair or rebuilding is approved by the Planning Director. The Planning Director may impose conditions of approval in accordance with all other building, plumbing, sanitation and other codes. Repair or other rebuilding may be allowed if both of the following criteria are met:
 - (1) The building was legally established; and
 - (2) The building was damaged or destroyed by fire, other casualty, or by any natural disaster.

A land use determination by the Planning Director regarding repairing or rebuilding a nonconforming structure shall be considered an administrative action as provided by Section 111.240 of the Zoning Ordinance. Notice of the Planning Director's decision shall be provided as required by Section 111.270 of the Zoning Ordinance.

- (B) When it is permissible to rebuild or repair a nonconforming use building which is partially or wholly destroyed, application for necessary permits shall be made within one (1) year after the occurrence of the fire, other casualty or natural disaster, and such permits must be renewed as provided by law or ordinance.
- (C) Any substantial increase in the size of the repaired or rebuilt structure shall be considered an alteration and the following is enacted in lieu thereof:

114.081. ALTERATION TO NONCONFORMING BUILDING OR USE.

- (A) A lawful nonconforming building or use may be altered in order to reasonably continue the use, subject to approval by the Hearings Officer after holding a public hearing. Alteration includes a substantial change to a structure or a change to a similar or more restricted use. The Hearings Officer may impose conditions of approval in order to reduce the impact of the alteration on the neighborhood. A land use determination granting approval for an alteration may be approved only if:
 - (1) The change in the use or structure is of no greater adverse impact to the neighborhood;
 - (2) The structure or use was legally established.
- (B) Alterations necessary to comply with a lawful requirement, normal maintenance such as re-roofing, and changes of ownership or occupancy do not require Hearings Officer approval. [114.085, 114.090 and 114.100 repealed by Ordinance 91-36, dated October 30, 1991.]

114.105. APPEAL TO THE BOARD OF COMMISSIONERS. An appeal may be taken to the Board of Commissioners by any person whose interests are adversely affected or who is aggrieved by the determination of the Hearings Officer on an application for alteration of a nonconforming building or use. Such an appeal shall be filed in accordance with the provisions of Section 111.280 of the Zoning Ordinance.

The Board of Commissioners shall review the action of the Hearings Officer, conduct a public hearing, and render a decision as prescribed in Chapter 111 of the Polk County Zoning Ordinance.

114.106. RESUBMISSION OF NONCONFORMING BUILDING OR USE

APPLICATION. No portion of an application for the alteration of a nonconforming building or use which has been denied by the Hearings Officer or the Board of Commissioners shall be resubmitted within a period of one year after such denial. This section does not prevent resubmission of applications withdrawn prior to approval or denial, upon payment of the fee prescribed for a new application.

114.107. REVOCATION OF PERMIT. Any alteration to a nonconforming building or use granted under this Ordinance may be canceled by the Hearings Officer or Board of Commissioners if it develops or is ascertained that the application therefore contains any false statements. In considering such a cancellation, the matter may be referred by the Board of Commissioners to County Counsel for an opinion. When an alteration to a nonconforming building or use granted under this Ordinance is canceled, it shall be unlawful for any person to exercise any right granted by the Hearings Officer or the Board of Commissioners pursuant to such application.

114.110. CONDITIONAL USES ARE NOT NONCONFORMING USES. Any use which is permitted as a conditional use as provided in this ordinance shall not be deemed a nonconforming use, but shall without further action, be deemed a conforming use qualified with such conditions as the Hearings Officer has required.

114.120. EFFECT OF CHANGE OF ZONES. Whenever any premises are reclassified or changed from one zone to another, the provisions of this ordinance dealing with nonconforming uses and buildings shall apply to any use or building in the area reclassified or changed from one zone to another.

114.130. REPEAL OF FORMER ORDINANCE DOES NOT CHANGE NONCONFORMING STATUS. Any use conducted or established, or any building or structure erected or maintained at and before the effective date of this ordinance (November 13, 1970), in violation of any planning or zoning ordinance then in effect, which use, building, or structure, or the establishment, erection, or maintenance whereof is also unlawful under this ordinance, shall not be classified as a nonconforming use by virtue of the repeal of any such former ordinance; and continuation of any such use, building, or structure shall constitute a violation of this ordinance. [114.140 repealed by Ordinance 91-36, dated October 30, 1991.]

114.141. VARIANCE USES MAY CONTINUE. Any use or building lawfully established under the variance provision of this ordinance may continue to be used and maintained for the same purpose as the variance was granted. Such use may not be changed unless it is changed to a use permitted by this ordinance.